

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE  
- *appellant*

CASE NO.

RP2576/2009

against  
EMPLOYER  
- *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire B.L.

Members: Mr J. Hennessy  
Ms. N. Greene

heard this appeal at Abbeyleix on 10th June 2010

Representation:

Appellant(s) : J.P. Fitzpatrick & Company, Solicitors, Landscape House,  
Abbeyleix Road, Portlaoise, Co. Laois

Respondent(s) : Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower  
Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

#### **Respondent's Case**

The respondent's representative told the Tribunal that a number of employees accepted a voluntary redundancy offer from the company in August 2009. The appellant did not work for the company at that time and indeed had not worked for the company for the previous 17 years. There was no formal termination of his employment 17 years previously but the appellant abandoned his position at that time. If the appellant is fit and available for work the company is in a position to provide him with work and is willing to offer him work.

#### **Appellant's Case**

The appellant gave direct evidence to the Tribunal that he commenced working for the respondent company in June 1977. In the early 1980's a fire occurred in the factory and the factory closed

down for a period of time. He was re-interviewed for his position and returned to employment in 1981 and continued working until October 1993 when he injured his back. He was absent on sick leave for a period of time and was eventually certified fit by his doctor in 1994 to return to work on light duties. However the respondent was not in a position to offer him light duties. He never returned to work after that.

In 2002 he received a letter from the respondent requesting that he make himself available to undergo a medical assessment. He informed the company that he had no difficulty in attending for a medical but heard nothing further from the company in that regard. He sought a redundancy payment in 2009 but was informed by the company that he was not entitled to redundancy, as he had not been in insurable employment for the previous 4 years. He confirmed that he was not in a position to accept the respondent's offer of work and he has not been available for work in the last 4 years.

### **Determination**

The Tribunal does not find it necessary to determine whether or not the appellant remains in employment. In any event the Tribunal determines that the appellant is not entitled to a redundancy payment as none of the situations specified in the Redundancy Payments Acts were shown to exist. Accordingly the Tribunal determines that the claim under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)